IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14376 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

WADHWAN M. PANJARAPOLE

Versus

GUJ.RAJYA SUDHRAI KAMDAR SANGHAND ANR

---

Appearance:

MR DD VYAS for Petitioner No. 1
MR BV LAKHIA for Respondent No. 1
MR BY MANKAD, AGP for Respondent No. 2

---

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/12/2001

ORAL JUDGEMENT

This petition has been filed for issuing writ, order or direction declaring that the provisions of the

Employees Provident Funds and Miscellaneous Provisions Act, 1952, are not attracted in the case of the petitioner-trust and the petitioner trust is not liable to make the contribution towards the provident fund scheme.

2. The petitioner-trust is a registered Charitable Trust, under the provisions of the Bombay Public Trusts Act, 1950 and the petitioner - trust is looking after handicapped, straw cattle with the treatment and feeding, etc. The petitioner trust is not engaged either in industrial or commercial activities and it does not fall within the definition of establishment as defined under the Employees Provident Fund Act, 1952 and the number of the employees are also less than the number prescribed under the Act. The ad-hoc employees have made several demands whereas they have not been engaged for doing regular activities of the trust and several demands have been raised which ultimately went to the office of the respondent no. 2 Government Labour Officer, Near Ster Dining Hall, Juntan Road, Surendranagar- by way of conciliation proceedings and the same was registered as Conciliation Case No. 22 of 1987. The petitioner was compelled to accept certain demands. So far as item no. 5 of the Demands regarding the provident fund scheme is concerned, the petitioner is aggrieved as the provisions of the aforesaid Act are not applicable in the facts and circumstances of the case as the petitioner trust does not come within the definition of the establishment nor it is engaged in activities warranting the applicability of the Act. In case, such provisions are made applicable to the petitioner illegally, the petitioner trust will have to be close down as a result thereof the handicapped, straw cattle will not be looked into by anybody even by the State Government. The respondent no. 1 Gujarat Rajya Sudhrai Kamdar Sangh has filed a complaint before the respondent no. 2 and hence this petition has been filed for quashing and setting aside the proceedings pending before the respondent no. 2.

3. Heard the learned counsel for the parties and perused the relevant material on the record of this case.

4. The contention of the learned counsel for the petitioner is that though the petitioner - trust is a charitable trust registered under the Bombay Public Trusts Act, 1950. But the petitioner - trust does not come within the definition of the establishment nor its activities are of industrial or commercial in nature. It is also contended by the learned counsel for the petitioner that the petitioner being a charitable

institution run by the petitioner on the basis of the donations received from different persons cannot be compelled by the statutory authority to run in a particular manner unless some illegality has been committed by it. In case, the trust is not functioning, it will be closed down and straw, handicapped cattle, etc. will not be looked after and the handicapped cattle would not be able to get shelter, food, lodging, treatment etc. and for that purpose, there is no Governmental institutions. It is the petitioner trust which is doing all these activities on the basis of the donations received from various persons and hence the provisions of the aforesaid Act are not applicable to the petitioner and the proceedings pending before are liable to be quashed and set aside.

5. Learned counsel for the petitioner has relied on the decision of this Court in the case of Wadhwan Mahajan Panjarapole Vs. B.D. Bhavsar and others, reported in 1994 (2) G.L.R. 1418, wherein it has been held as under:

> "With reference to the statutory material if it is found out that the establishment like Panjarapole if at all it is referred to as an establishment, will not fall within the definition of commercial establishment, obviously the Gratuity Act will not apply to the petitioner.
>
> The Charitable or other Trusts whether registered or not or Society under the Societies Registration Act, 1960 has to be shown as engaged in activity related to the business, trade, profession or work in connection with or incidential or ancillary thereto.
>
> When it could not be shown that Panjarapole is doing either business or trade or profession or any work in connection with or incidental or ancillary to it, obviously, it will not be covered by that definition."

6. On the contrary, Mr. B.Y. Mankad, learned A.G.P. appearing on behalf of the respondent no. 2 contended that the petitioner filed compromises pursis before the respondent no.2 wherein the petitioner has accepted to give benefits of the Provident Fund Act to its employees. As such, the provisions of the Provident Fund Act would be applicable to the petitioner - trust. Learned counsel for the petitioner contended that the

petitioner has filed compromise pursis accepting the liability to pay provident fund to its employees but that pursis has not been accepted by the respondent no. 2 where the proceedings pursuant to the complaint issued by the respondent no. 1 to the respondent no. 2, are still pending. Even if such compromise purses is filed by the petitioner the Law does not permit, such compromise purses cannot be accepted. The complaint filed by the respondent no.1 before the respondent no. 2 is still pending. Learned A.G.P. suggested that this Court may direct the respondent no. 2 to decide the proceedings pending before it in accordance with law after affording reasonable opportunity of hearing and leading evidence to the parties concerned within a stipulated time.

7. Considering the facts and circumstances of the case, submissions made by the learned counsel for the parties and material on record, this petition is being disposed of finally with a direction to the respondent no. 2 to decide the complaint filed by the respondent no. 1 as well as the show cause notice given by the respondent no. 2 to the petitioner on 10-12-1993 in accordance with law after affording reasonable opportunity of hearing as well as leading evidence including to raise all legal and factual contentions, within a period of three months from the date of receipt of a certified copy of this order. Rule is made absolute to the aforesaid extent, with no order as to costs.

-0-0-0-0-0-

/JVSatwara/